

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA

JAMES EDWARD SHERROD,

Plaintiff,

vs.

GARY E. LACEY, LINCOLN POLICE
DEPARTMENT, NEBRASKA
DEPARTMENT OF CORRECTIONAL
SERVICES, AND NEBRASKA
STATE PATROL, Lancaster County;

Defendants.

4:14CV3003

**MEMORANDUM
AND ORDER**

This matter is before the court on Plaintiff's Notices of Appeal (Filing No. [33](#), [34](#)) and Motion for Leave to Proceed in Forma Pauperis ("IFP") on Appeal (Filing No. [33](#)). The court has carefully reviewed the record and finds that Plaintiff may not proceed IFP on appeal.

Under the provisions of [28 U.S.C. § 1915\(g\)](#), a prisoner may not proceed IFP in a civil action, or appeal a judgment in a civil action, if the prisoner has, on three or more occasions, while incarcerated, brought an action or appeal in federal court that was dismissed on the grounds that it is frivolous, malicious, or fails to state a claim upon which relief may be granted. [28 U.S.C. §1915\(g\)](#). An exception is made for prisoners who are under imminent danger of serious physical injury. [*Id.*](#)

The following three cases or appeals brought by Plaintiff were dismissed because they failed to state a claim upon which relief may be granted or because they

were frivolous: *Sherrod v. State of Nebraska, et al.*, No. 4:02CV3129 (D. Neb. March 17, 2003), Filing No. 50 (dismissing amended complaint for failure to state a claim upon which relief may be granted); *Sherrod v. Kenney, et al.*, No. 4:00CV3322 (D. Neb. March 26, 2001), Filing Nos. 9 and 10 (dismissing complaint as frivolous); and *Sherrod v. Hopkins, et al.*, No. 4:92CV3178 (D. Neb. Aug. 10, 1992), Filing No. 16 (dismissing complaint as frivolous).

Here, Plaintiff has not shown that he faces any danger or physical injury. Thus, he is not permitted to proceed IFP in this court and he is not entitled to proceed IFP on appeal.

Plaintiff has also filed a Motion to Appoint Counsel. (Filing No. [33](#).) Plaintiff's motion for appointment of counsel on appeal should be addressed to the Eighth Circuit Court of Appeals. Therefore, the Court will deny Plaintiff's Motion to Appoint Counsel (Filing No. [33](#)) without prejudice to reassertion before the Eighth Circuit.

IT IS THEREFORE ORDERED that:

1. Plaintiff is not entitled to proceed IFP on appeal. His Motion for Leave to Proceed in Forma Pauperis ("IFP") on Appeal (Filing No. [33](#)) is denied.
2. Plaintiff's Motion to Appoint Counsel (Filing No. [33](#)) is denied without prejudice to reassertion before the Eighth Circuit.

3. The clerk's office is directed to forward a copy of this Memorandum and Order to the Eighth Circuit Court of Appeals.

Dated this 25th day of January, 2017.

BY THE COURT:

s/ Richard G. Kopf
Senior United States District Judge